



U.S. Department of Justice

Civil Rights Division

Freedom of Information/Privacy Acts Branch - BICN
950 Pennsylvania Avenue, NW
Washington, DC 20530

NDH:TCG:ANF
12-00132-F

FEB 16 2012

MuckRock News
Dept MR 631
PO Box 55819
Boston, MA 02205-5819

Dear Colleague:

This is in response to your Freedom of Information Act request dated January 6, 2012 and received by the Civil Rights Division on January 9, 2012, seeking "letters sent by DOJ Civil Rights Division to cities or towns located in the State of Massachusetts from January 1, 2009 to the present."

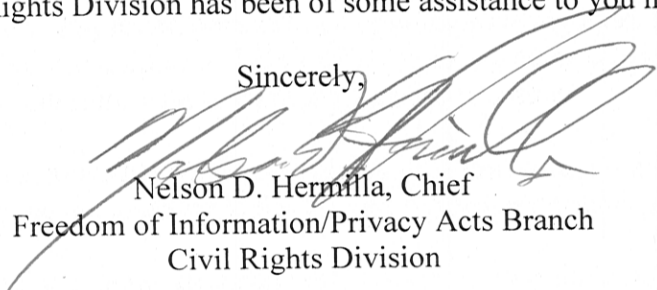
The records you have requested pertain to an ongoing investigation, therefore the documents are being denied pursuant to 5 U.S.C. §552(b)(7)(A), since disclosure thereof could reasonably be expected to interfere with law enforcement proceedings.

The only documents available for release at this time that would not interfere with the ongoing investigation are the enclosed three Settlement Agreement documents.

Should you wish to appeal my decision with respect to your request, you may appeal by writing to the Director, Office of Information and Policy (OIP), United States Department of Justice, 1425 New York Avenue, N.W., Suite 11050 Washington, DC 20530. Your appeal must be received by OIP within sixty days of the date of this letter. The envelope should be marked "FOI/PA Appeal". Following review by the Department, judicial review of the decision of the Attorney General is available in the United States District Court in the judicial district in which you reside, in which you have your principal place of business, or in the District of Columbia.

I hope the Civil Rights Division has been of some assistance to you in this matter.

Sincerely,


Nelson D. Hermilla, Chief
Freedom of Information/Privacy Acts Branch
Civil Rights Division

SETTLEMENT AGREEMENT BETWEEN
THE UNITED STATES OF AMERICA
AND
NORFOLK COUNTY, MASSACHUSETTS

DJ 204-36-191

Fact Sheet • Press Release

BACKGROUND

SCOPE OF THE INVESTIGATION

The United States Department of Justice (Department) initiated this matter as a compliance review of Norfolk County (hereinafter "County"), Massachusetts under title II of the Americans with Disabilities Act of 1990 (ADA), 42 U.S.C. §§12131-12134, and the Department's implementing regulation, 28 C.F.R. Part 35. Because the County received financial assistance from the Department of Justice, the review was also conducted under the authority of section 504 of the Rehabilitation Act of 1973, 29 U.S.C. §794, and the Department's implementing regulation, 28 C.F.R. Part 42, Subpart G.

The review was conducted by the Disability Rights Section of the Department's Civil Rights Division and focused on the County's compliance with the following title II requirements:

- to conduct a self-evaluation of its services, policies, and practices by July 26, 1992, and make modifications necessary to comply with the Department's title II regulation, 28 C.F.R. § 35.105;
- to notify applicants, participants, beneficiaries, and other interested persons of their

rights and the County's obligations under title II and the Department's regulation, 28 C.F.R. § 35.106;

- to designate a responsible employee to coordinate its efforts to comply with and carry out the County's ADA responsibilities, 28 C.F.R. § 35.107(a);
- to establish a grievance procedure for resolving complaints of violations of title II, 28 C.F.R. § 35.107(b);
- to operate each program, service, or activity so that, when viewed in its entirety, it is readily accessible to and usable by individuals with disabilities, 28 C.F.R. §§ 35.149-35.150, by:
 - delivery of services, programs, or activities in alternate ways, including, for example, redesign of equipment, reassignment of services, assignment of aides, home visits, or other methods of compliance or, if these methods are not effective in making the programs accessible, 28 C.F.R. §§ 35.150,
 - physical changes to buildings (required to have been made by January 26, 1995), in accordance with the Department's title II regulation, 28 C.F.R. §§ 35.150 and 35.151, and the ADA Standards for Accessible Design (Standards), 28 C.F.R. pt. 36, App. A, or the Uniform Federal Accessibility Standards (UFAS), 41 C.F.R. §§ 101-19.6, App. A.
- to ensure that facilities for which construction or alteration was begun after January 26, 1992, are readily accessible to and usable by people with disabilities, in accordance with 1) the Department's title II regulation and 2) the Standards or UFAS, 28 C.F.R. § 35.151;
- to ensure that communications with applicants, participants, and members of the public with disabilities are as effective as communications with others, including furnishing auxiliary aids and services when necessary, 28 C.F.R. § 35.160;
- to provide direct access via TTY (text telephone) or computer-to-telephone emergency

services, including 9-1-1 services, for persons who use TTY's and computer modems, 28 C.F.R. § 35.162;

- to provide information for interested persons with disabilities concerning the existence and location of the County's accessible services, activities, and facilities, 28 C.F.R. § 35.163(a); and
- to provide signage at all inaccessible entrances to each of its facilities, directing users to an accessible entrance or to information about accessible facilities, 28 C.F.R. § 35.163(b).

As part of its compliance review, the Department reviewed the following facilities, which - because alterations commenced after January 26, 1992 - must comply with the ADA's alterations requirements: Norfolk County Superior Court, Dedham District Court, Registry Building, Stoughton District Courthouse, Wrentham District Courthouse and Brookline District Courthouse.

The Department's program access review also covered those of the County's programs, services, and activities that operate in the following additional facilities: Administrative Offices and the President's Golf Course.

The Department also reviewed the County's policies and procedures regarding emergency management and disaster prevention, and sidewalk maintenance to evaluate whether persons with disabilities have an equal opportunity to utilize these programs.

JURISDICTION

1. The ADA applies to the County because it is a "public entity" as defined by title II. 42 U.S.C. § 12131(1).
2. The Department is authorized under 28 C.F.R. Part 35, Subpart F, to determine the compliance of the County with title II of the ADA and the Department's title II

implementing regulation, to issue findings, and, where appropriate, to negotiate and secure voluntary compliance agreements. Furthermore, the Attorney General is authorized, under 42 U.S.C. § 12133, to bring a civil action enforcing title II of the ADA should the Department fail to secure voluntary compliance pursuant to Subpart F.

3. The Department is authorized under 28 C.F.R. Part 42, Subpart G, to determine the County's compliance with section 504 of the Rehabilitation Act of 1973, to issue findings, and, where appropriate, to negotiate and secure voluntary compliance agreements. Furthermore, the Attorney General is authorized, under 29 U.S.C. § 794 and 28 C.F.R. §§ 42.530 and 42.108-110, to suspend or terminate financial assistance to the County provided by the Department of Justice should the Department fail to secure voluntary compliance pursuant to Subpart G or to bring a civil suit to enforce the rights of the United States under applicable federal, state, or local law.
4. The parties to this Agreement are the United States of America and Norfolk County, Massachusetts.
5. In order to avoid the burdens and expenses of an investigation and possible litigation, the parties enter into this Agreement.
6. In consideration of, and consistent with, the terms of this Agreement, the Attorney General agrees to refrain from filing a civil suit in this matter regarding all matters contained within this Agreement, except as provided in the section entitled "Implementation and Enforcement".

ACTIONS TAKEN BY COUNTY

7. Over the past decade, the County has worked toward bringing the following facilities into compliance with the ADA: Norfolk County Superior Court, Dedham District Court, Registry Building, Stoughton District Courthouse, Wrentham District Courthouse, Brookline District Courthouse, County Administration Building, Wollaston Recreational Facility, Norfolk County Agricultural High School and the Quincy District Court.

Notwithstanding these efforts, additional compliance steps are necessary.

REMEDIAL ACTION

NOTIFICATION

8. Within two (2) months of the effective date of this Agreement, the County will adopt the attached Notice (Attachment A); distribute it to all agency heads; publish the Notice in a local newspaper of general circulation serving the County; post the Notice on its Internet Home Page; and post copies in conspicuous locations in its public buildings. It will refresh the posted copies, and update the contact information contained on the Notice, as necessary, for the life of this Agreement. Copies will also be provided to any person upon request.
9. Within six (6) months of the effective date of this Agreement, and on yearly anniversaries of this Agreement until it expires, the County will report to the Department its written procedures for providing information for interested persons with disabilities concerning the existence and location of the County's accessible programs, services, and activities.

GRIEVANCE PROCEDURE

10. Within three (3) months of the effective date of this Agreement, the County will adopt the attached ADA Grievance Procedure (Attachment B), distribute it to all agency heads, and post copies of it in conspicuous locations in each of its public buildings. It will refresh the posted copies, and update the contact information contained on it, as necessary, for the life of the Agreement. Copies will also be provided to any person upon request.

GENERAL EFFECTIVE COMMUNICATION PROVISIONS

11. Within three (3) months of the effective date of this Agreement, the County will identify

sources of qualified sign language and oral interpreters, real-time transcription services, and vendors that can put documents in Braille, and will implement and report to the Department its written procedures, with time frames, for fulfilling requests from the public for sign language or oral interpreters, real-time transcription services, and documents in alternate formats (Braille, large print, cassette tapes, accessible electronic format (e.g., HTML), etc.).

12. The County will take steps to ensure that appropriate employees are trained and practiced in using the Massachusetts Relay Service to make and receive calls.

EMPLOYMENT

13. Within six (6) months of the effective date of this Agreement, the County will amend its employment policies, as necessary, to comply with the regulations of the U.S. Equal Employment Opportunity Commission implementing title I of the Americans with Disabilities Act of 1990, codified at 29 C.F.R. Part 1630. At minimum, those policies will provide that the County:

- will not discriminate on the basis of disability in its hiring or employment practices;
- will not ask a job applicant about the existence, nature, or severity of a disability. Applicants may be asked about their ability to perform specific job functions. Medical examinations or inquiries may be made, but only after a conditional offer of employment is made and only if required of all applicants for the position;
- will make reasonable accommodations for the known physical or mental limitations of a qualified applicant or employee with a disability upon request unless the accommodation would cause an undue hardship on the operation of the County's business. If an applicant or an employee requests a reasonable accommodation and the individual's disability and need for the accommodation are

not readily apparent or otherwise known, the County may ask the individual for information necessary to determine if the individual has a disability-related need for the accommodation;

- will maintain any employee's medical records separate from personnel files and keep them confidential; and
- will make an individualized assessment of whether a qualified individual with a disability meets selection criteria for employment decisions. To the extent the County's selection criteria have the effect of disqualifying an individual because of disability, those criteria will be job-related and consistent with business necessity.

WEB-BASED SERVICES AND PROGRAMS

14. Within three (3) months of the effective date of this Agreement, and on subsequent anniversaries of the effective date of this Agreement, the County will distribute to all persons - employees and contractors - who design, develop, maintain, or otherwise have responsibility for content and format of its website(s) or third party websites used by the County (Internet Personnel) the technical assistance document, "Accessibility of State and Local Government Websites to People with Disabilities" which is Attachment H to this Agreement (it is also available at www.ada.gov/websites2.htm).
15. Within six (6) months of the effective date of this Agreement, and throughout the life of the Agreement, the County will do the following:
 - A. Establish, implement, and post online a policy that its web pages will be accessible and create a process for implementation;
 - B. Ensure that all new and modified web pages and content are accessible;
 - C. Develop and implement a plan for making existing web content more accessible;

- D. Provide a way for online visitors to request accessible information or services by posting a telephone number or e-mail address on its home page; and
- E. Periodically (at least annually) enlist people with disabilities to test its pages for ease of use.

***NEW CONSTRUCTION, ALTERATIONS, AND PHYSICAL CHANGES TO
FACILITIES***

- 16. The County will ensure that all buildings and facilities constructed by or on behalf of the County after January 26, 1992, are constructed in full compliance with the requirements of 28 C.F.R. § 35.151, including applicable architectural standards.
- 17. The County will ensure that alterations to County facilities made after January 26, 1992, are made in full compliance with the requirements of 28 C.F.R. § 35.151, including applicable architectural standards.
- 18. Attachments J and K list the elements or features of the County's facilities that do not comply with the Standards. It is the Department's position that elements or features of a facility that do not comply with the Standards prevent persons with disabilities from fully and equally enjoying County services, programs, and activities, and constitutes discrimination on the basis of disability within the meaning of 42 U.S.C. § 12132 and 28 C.F.R. §§ 35.149 and 35.150. However, this Agreement shall not be construed as an admission of liability or discrimination by the County.
- 19. When taking the actions required by this Agreement until March 15, 2012, the County may comply with the cited provisions of the Standards or the 2010 Standards defined at 28 C.F.R. §§ 35.104, which includes both the title II regulation at 28 C.F.R. §§ 35.151 and the 2004 ADAAG at 36 C.F.R. Part 1191, Appendices B and D. After March 15, 2012, the County will notify the Department of which of these two accessibility standards it elects to use; use the same accessibility standard throughout a facility in

making alterations; and report to the Department which set of Standards will be used for each facility.

20. Within nine (9) months of the effective date of this Agreement, the County will install signage as necessary to comply with 28 C.F.R. § 35.163(b), after having surveyed all facilities that are the subject of this Agreement for the purpose of identifying those that have multiple entrances not all of which are accessible.
21. Altered Facilities: In order to ensure that the following spaces and elements in County facilities for which alterations commenced after January 26, 1992, are readily accessible to and usable by persons with disabilities, the County will take the actions listed in Attachments J and M, as necessary.
22. Program Access in Existing Facilities: In order to ensure that each of the County's programs, services, and activities operating at a facility that is the subject of this Agreement, when viewed in its entirety, is readily accessible to and usable by persons with mobility impairments, the County will take the actions listed in Attachments K and M, as necessary.
23. Facilities and Programs Not Surveyed by the Department: The County will review compliance with the requirements of title II of the ADA for those County facilities and programs that were not reviewed by the Department prior to this Agreement. Within twelve (12) months of the effective date of this Agreement, the County will submit for review by the Department a detailed report listing the access issues identified during its review together with the corrective actions and completion dates proposed to resolve such issues. The review conducted by the County, the access issues identified and the corrective actions and completion dates proposed will be consistent with the requirements of title II of the ADA.

MISCELLANEOUS PROVISIONS

24. Except as otherwise specified in this Agreement, at yearly anniversaries of the effective date of this Agreement until it expires, the County will submit written reports to the Department summarizing the actions the County has taken pursuant to this Agreement during each year. The reports will include, as necessary to document compliance with the terms of this Agreement, detailed photographs showing measurements, architectural plans, work orders, notices published in the newspaper, copies of adopted policies, and proof of efforts to secure funding/assistance for structural renovations or equipment.
25. Throughout the life of this Agreement, consistent with 28 C.F.R. § 35.133(a), the County will maintain the accessibility of its programs, activities, services, facilities and equipment, and will take the necessary actions (such as routine testing of accessibility equipment and routine accessibility audits of its programs and facilities) to do so. This provision does not prohibit isolated or temporary interruptions in service or access due to maintenance or repairs. 28 C.F.R. § 35.133(b).
26. Within six (6) months of the effective date of this Agreement, the County will develop or procure a two-hour training program on the requirements of the ADA and appropriate ways of serving persons with disabilities. The County will use the ADA technical assistance materials developed by the Department and will consult with interested persons, including individuals with disabilities, in developing or procuring the ADA training program.
27. Within one (1) year of the effective date of this Agreement, the County will deliver its training program to all County employees who have direct contact with members of the public. At the end of that period, the County will submit a copy of its training curriculum and materials to the Department, along with a list of employees trained and the name, title, and address of the trainer.

IMPLEMENTATION AND ENFORCEMENT

28. If at any time during the life of this Agreement the County desires to modify any portion

of this Agreement because of changed conditions making performance impossible or impractical or for any other reason, it will promptly notify the Department in writing, setting forth the facts and circumstances thought to justify modification and the substance of the proposed modification. Until there is written agreement by the Department to the proposed modification, the proposed modification will not take effect. These actions must receive the prior written approval of the Department, which approval will not be unreasonably withheld or delayed.

29. It is a violation of this Agreement for the County to fail to comply in a timely manner with any of its requirements without obtaining sufficient advance written agreement with the Department for an extension of the relevant time frame imposed by the Agreement unless the County requests a modification to this Agreement prior to the expiration of the time for compliance.
30. The Department may review compliance with this Agreement at any time. If the Department believes that the County has failed to comply in a timely manner with any requirement of this Agreement without obtaining sufficient advance written agreement with the Department for a modification of the relevant terms, the Department will notify the County in writing and it will attempt to resolve the issue or issues in good faith. If the Department is unable to reach a satisfactory resolution of the issue or issues raised within one-hundred twenty (120) days of the date it provides notice to the County, it may institute a civil action in federal district court to enforce the terms of this Agreement, or it may initiate appropriate steps to enforce title II and section 504 of the Rehabilitation Act.
31. Failure by the Department to enforce this entire Agreement or any provision thereof with regard to any deadline or any other provision herein will not be construed as a waiver of the Department's right to enforce other deadlines and provisions of this Agreement.
32. This Agreement is a public document. A copy of this document or any information contained in it will be made available to any person by the County or the Department on

request.

33. This Agreement constitutes the entire agreement between the parties on the matters raised herein, and no other statement, promise, or agreement, either written or oral, made by either party or agents of either party, that is not contained in this written Agreement (including its Attachments, which are hereby incorporated by reference), will be enforceable. This Agreement does not purport to remedy any other potential violations of the ADA or any other federal law. This Agreement does not affect the County's continuing responsibility to comply with all aspects of the ADA and section 504 of the Rehabilitation Act.
34. This Agreement will remain in effect for three (3) years or until the parties agree that all actions required by the Agreement have been completed, whichever is later.
35. The persons signing for the County represent that they are authorized to bind the County to this Agreement.
36. The effective date of this Agreement is the date of the last signature below.

For Norfolk County By its Board of County
Commissioners:

By: _____

FRANCIS W. O'BRIEN, Chairman

By: _____

JOHN M. GILLIS, Commissioner

By: _____

PETER H. COLLINS, Commissioner

For the United States:

THOMAS E. PEREZ

Assistant Attorney General for Civil
Rights

SAMUEL R. BAGENSTOS

Principal Deputy Assistant Attorney
General

Civil Rights Division

ALLISON J. NICHOL, Chief

DOV LUTZKER, Acting Deputy Chief

By: _____

JANA ERICKSON, Supervisory Attorney

Date: July 20,
2011 _____

Date: July 26,
2011 _____

[Return to Project Civic Access](#)

[ADA Home Page](#)

last updated July 27, 2011

**SETTLEMENT AGREEMENT BETWEEN
THE UNITED STATES OF AMERICA
AND
THE TOWN OF SWANSEA, MASSACHUSETTS
UNDER THE AMERICANS WITH DISABILITIES ACT**

DJ 204-36-195

Press Release • Fact Sheet

BACKGROUND

SCOPE OF THE INVESTIGATION

The United States Department of Justice ("Department") initiated this matter as a compliance review of the Town of Swansea, Massachusetts, ("Town") under title II of the Americans with Disabilities Act of 1990 (ADA), 42 U.S.C. §§ 12131-12134, and the Department's implementing regulation, 28 C.F.R. Part 35.

The review was conducted by the Disability Rights Section of the Department's Civil Rights Division and focused on the Town's compliance with the following title II requirements:

- to conduct a self-evaluation of its services, policies, and practices by July 26, 1992, and make modifications necessary to comply with the Department's title II regulation, 28 C.F.R. § 35.105;
- to notify applicants, participants, beneficiaries, and other interested persons of their rights and the Town obligations under title II and the Department's regulation, 28 C.F.R. § 35.106;
- to designate a responsible employee to coordinate its efforts to comply with and carry out the Town's ADA responsibilities, 28 C.F.R. § 35.107(a);
- to establish a grievance procedure for resolving complaints of violations of title II, 28 C.F.R. § 35.107(b);

- to operate each program, service, or activity so that, when viewed in its entirety, it is readily accessible to and usable by individuals with disabilities, 28 C.F.R. §§ 35.149 - 35.150, by:
 - delivery of services, programs, or activities in alternate ways, including, for example, redesign of equipment, reassignment of services, assignment of aides, home visits, or other methods of compliance or, if these methods are not effective in making the programs accessible,
 - physical changes to buildings (required to have been made by January 26, 1995), in accordance with the Department's title II regulation, 28 C.F.R. §§ 35.150 and 35.151, and the ADA Standards for Accessible Design (Standards), 28 C.F.R. pt. 36, App. A, or the Uniform Federal Accessibility Standards (UFAS), 41 C.F.R. § 101-19.6, App. A.
- to ensure that facilities for which construction or alteration was begun after January 26, 1992, are readily accessible to and usable by people with disabilities, in accordance with 1) the Department's title II regulation and 2) the Standards or UFAS, 28 C.F.R. § 35.151;
- to ensure that communications with applicants, participants, and members of the public with disabilities are as effective as communications with others, including furnishing auxiliary aids and services when necessary, 28 C.F.R. § 35.160;
- to provide direct access via TTY (text telephone) or computer-to-telephone emergency services, including 9-1-1 services, for persons who use TTY's and computer modems, 28 C.F.R. § 35.162;
- to provide information for interested persons with disabilities concerning the existence and location of the Town accessible services, activities, and facilities, 28 C.F.R. § 35.163(a); and
- to provide signage at all inaccessible entrances to each of its facilities, directing users to an accessible entrance or to information about accessible facilities, 28 C.F.R. § 35.163(b).
- As part of its compliance review, the Department reviewed the following facilities, which – because construction or alterations commenced after January 26, 1992 – must comply with the ADA's new construction or alterations requirements: Animal Control Building, Vinnicum Woods Cemetery, Fire Station #4, and Senior Center.

- The Department's program access review covered those of the Town programs, services, and activities that operate in the following facilities: Town Hall Annex, Swansea Public Library, Town Hall Building, Swansea Police Station, Swansea Highway Department, School Administration Building, Town Beach, Little League Field Complex, and Fire Station #2.
- The Department conducted a program access review of the following polling places: Swansea Ambulance Corps, E. S. Brown School, and St. Dominic's Parish Hall. This review was limited to the areas of the facilities used by the voting public: parking, the route from the parking area to the area used for voting, and the area used for voting.
- The Department reviewed Town policies and procedures regarding voting, emergency management and disaster prevention, and sidewalk maintenance to evaluate whether persons with disabilities have an equal opportunity to utilize these programs.
- Finally, the Department reviewed the Town's Police Department's policies and procedures regarding providing effective communication to persons who are deaf or hard-of-hearing.

JURISDICTION

1. The ADA applies to the Town because it is a "public entity" as defined by title II. 42 U.S.C. § 12131(1).
2. The Department is authorized under 28 C.F.R. Part 35, Subpart F, to determine the compliance of the Town with title II of the ADA and the Department's title II implementing regulation, to issue findings, and, where appropriate, to negotiate and secure voluntary compliance agreements. Furthermore, the Attorney General is authorized, under 42 U.S.C. § 12133, to bring a civil action enforcing title II of the ADA should the Department fail to secure voluntary compliance pursuant to Subpart F.
3. The parties to this Agreement are the United States of America and the Town of Swansea, Massachusetts.
4. In order to avoid the burdens and expenses of an investigation and possible litigation, the parties enter into this Agreement.
5. In consideration of, and consistent with, the terms of this Agreement, the Attorney General agrees to refrain from filing a civil suit in this matter regarding all matters contained within this Agreement, except as provided in the section entitled "Implementation and Enforcement."

ACTIONS TAKEN BY THE TOWN

6. The Town has made efforts to designate accessible parking at various Town facilities.
7. The Town has placed an accessible portable toilet at the Town Beach.
8. The Town has made certain efforts to provide access to individuals with disabilities by installing ramps and door bells at various buildings.

REMEDIAL ACTION

NOTIFICATION

9. Within three months of the effective date of this Agreement, the Town will adopt the attached Notice (Attachment A); distribute it to all agency heads; publish the Notice in a local newspaper of general circulation serving the Town; post the Notice on its Internet Home Page; and post copies in conspicuous locations in its public buildings. It will refresh the posted copies, and update the contact information contained on the Notice, as necessary, for the life of this Agreement. Copies will also be provided to any person upon request.
10. Within six months of the effective date of this Agreement, and on yearly anniversaries of this Agreement until it expires, the Town will implement and report to the Department its written procedures for providing information for interested persons with disabilities concerning the existence and location of the Town accessible programs, services, and activities.

ADA COORDINATOR

11. Within three months of the effective date of this Agreement, the Town will appoint or hire one or more ADA Coordinator(s). The ADA Coordinator(s) will coordinate the Town effort to comply with and carry out its responsibilities under the ADA, including any investigation of complaint communicated to it alleging its noncompliance with title II or alleging any actions that would be prohibited under title II. The Town will make available to all interested individuals the name(s), office address(es), and telephone number(s) of the ADA Coordinator(s).

GRIEVANCE PROCEDURE

12. Within three months of the effective date of this Agreement, the Town will adopt the

attached ADA Grievance Procedure (Attachment B), distribute it to all agency heads, and post copies of it in conspicuous locations in each of its public buildings. It will refresh the posted copies, and update the contact information contained on it, as necessary, for the life of the Agreement. Copies will also be provided to any person upon request.

GENERAL EFFECTIVE COMMUNICATION PROVISIONS

13. Within three months of the effective date of this Agreement, the Town will identify sources of qualified sign language and oral interpreters, real-time transcription services, and vendors that can put documents in Braille, and will implement and report to the Department its written procedures, with time frames, for fulfilling requests from the public for sign language or oral interpreters, real-time transcription services, and documents in alternate formats (Braille, large print, cassette tapes, accessible electronic format (*e.g.*, HTML), etc.).
14. The Town will take steps to ensure that all appropriate employees are trained and practiced in using the Massachusetts Relay Service ("MassRelay") to make and receive calls.

9-1-1

15. Within three months of the effective date of this Agreement, the Town will ensure that each 9-1-1 call station is equipped with a TTY or computer equivalent.
16. Within three months of the effective date of this Agreement, the Town will develop procedures for answering 9-1-1 calls that include training all call takers to use a TTY to take 9-1-1 calls, to recognize a "silent" open line as a potential TTY call and respond by TTY, and to ensure that TTY calls are answered as quickly as other calls received.
17. The Town will monitor its incoming 9-1-1 TTY calls to ensure they are answered as quickly and accurately as other calls received.
18. The Town will incorporate correct TTY call-taking procedures into 9-1-1 call takers' performance evaluations and will amend its personnel policies to include written disciplinary procedures for call takers who fail to perform TTY call-taking consistent with the training and procedures. The Town will implement and report to the Department its evaluation and procedures within three months of the effective date of this Agreement.

LAW ENFORCEMENT AND EFFECTIVE COMMUNICATION

19. Within three months of the effective date of this Agreement, the Town will adapt for its own use and implement the Town of Swansea Police Department's Policy Statement on Effective Communication with People Who are Deaf or Hard of Hearing (Attachment C) and distribute to all police department officers the *Guide for Law Enforcement Officers When in Contact with People Who are Deaf or Hard of Hearing* (Attachment D).
20. Within three months of the effective date of this Agreement, the Town will contract with one or more local qualified oral/sign language interpreter agencies to ensure that the interpreting services will be available on a priority basis, twenty-four hours per day, seven days a week, to its police department or make other appropriate arrangements (such as contracting directly with or hiring qualified interpreters).
21. Within three months of the effective date of this Agreement, the Town will ensure that the police station is equipped with a working TTY to enable persons who are deaf, hard of hearing, or who have speech impairments to make outgoing telephone calls. Where inmate telephone calls are time-limited, the Town will adopt policies permitting inmates who use TTY's a longer period of time to make those calls, due to the slower nature of TTY communications compared with voice communications.

EMPLOYMENT

22. Within three months of the effective date of this Agreement, the Town will amend its employment policies, as necessary, to comply with the regulations of the U.S. Equal Employment Opportunity Commission implementing title I of the Americans with Disabilities Act of 1990, codified at 29 C.F.R. Part 1630. At minimum, those policies will provide that the Town:
 - will not discriminate on the basis of disability in its hiring or employment practices.
 - will not ask a job applicant about the existence, nature, or severity of a disability. Applicants may be asked about their ability to perform specific job functions. Medical examinations or inquiries may be made, but only after a conditional offer of employment is made and only if required of all applicants for the position.
 - will make reasonable accommodations for the known physical or mental

limitations of a qualified applicant or employee with a disability upon request unless the accommodation would cause an undue hardship on the operation of the Town's business. If an applicant or an employee requests a reasonable accommodation and the individual's disability and need for the accommodation are not readily apparent or otherwise known, the Town may ask the individual for information necessary to determine if the individual has a disability-related need for the accommodation.

- will maintain any employee's medical records separate from personnel files and keep them confidential.
- will make an individualized assessment of whether a qualified individual with a disability meets selection criteria for employment decisions. To the extent the Town selection criteria have the effect of disqualifying an individual because of disability, those criteria will be job-related and consistent with business necessity.

POLLING PLACES

23. Some of the Town's polling places may be owned or operated by other public entities subject to title II or by public accommodations subject to title III and, as such, would be subject to the obligation to provide program access or to remove barriers to accessibility under the ADA. This Agreement does not limit future enforcement action against the owners or operators of these polling places by any person or entity, including the Department.
24. Before designating any site as a new polling place, the Town will survey the site using the survey instrument at Exhibit F to determine whether the site contains barriers to access by people with disabilities in the parking, exterior route to the entrance, entrance, interior route to the voting area, or voting area. The Town will not designate any such site as a polling place until all such barriers have been removed.
25. The Department surveyed certain of Town's polling places. Barriers to access at such polling places owned by the Town and the dates by which the Town will remove barriers are noted in Attachments I, J, and K.
26. Barriers to access at the polling places not owned by the Town which were surveyed by the Department are noted in Attachment E. Within one month of the effective date of this Agreement, the Town will request in writing that each of the owners and operators of the polling places listed in Attachment E remove the noted barriers to

access for persons with disabilities within one year of the effective date of this Agreement. The Town will provide a copy of the Department's ADA Checklist for Polling Places (www.ada.gov/votingck.htm) with the written request. The Town will simultaneously send a courtesy copy of the request to the Department.

27. Within nine months of the effective date of this Agreement, the Town will survey all facilities listed in Attachment E to determine whether the barriers noted have been removed. If not, for each polling place that still contains inaccessible parking, exterior route to the entrance, entrance, interior route to the voting area, or voting area, the Town will identify within eighteen months of the effective date of this Agreement an alternate location where these elements are accessible. That identification will utilize the survey instrument that appears as Attachment F to this Agreement. The Town will then take immediate steps to change its polling place to the new location. Under this provision of the Agreement, the Town will ensure that barriers at each polling place identified in Attachment E are either removed or a substitute accessible polling place is in operation before the next election occurring more than 38 months after the effective date of this Agreement.
28. Within twelve months of the effective date of this Agreement, using the survey instrument at Attachment F, the Town will survey all polling places not surveyed by the Department to identify barriers to access by people with disabilities in the parking, exterior route to the entrance, entrance, interior route to the voting area, and voting area. Within eighteen months of the effective date of this Agreement, for each such polling place, the Town will then either (1) ensure that all barriers to access by people with disabilities have been removed or (2) identify an alternate polling place with no barriers to access by people with disabilities. That identification of accessible polling places will utilize the survey instrument that appears as Attachment F to this Agreement. The Town will then take immediate steps to change each new inaccessible polling place to a new accessible location. Under this provision of the Agreement, the Town will ensure that barriers at each polling place the Department did not survey are either removed or a substitute accessible polling place is in operation before the next election occurring more than 38 months after the effective date of this Agreement.
29. Until all polling places in each precinct or voting district have accessible parking, exterior routes, entrances, interior routes to the voting area, and voting area, prior to each election, the Town will identify and widely publicize to the public and to persons with disabilities and organizations serving them the most accessible polling place(s) for each precinct or voting district.

30. Within three months of the effective date of this Agreement, the Town will provide opportunities for same-day balloting for voters with disabilities whose assigned polling place does not have accessible parking, exterior route to entrance, entrance, interior route to the voting area, and voting area. The method for providing these opportunities may include allowing the individual to vote at another nearby location that is accessible, allowing individuals with disabilities to vote by an absentee ballot that is accepted if postmarked on the day of the election (or picked up by election officials at the home of the voter on the same day as the election), providing curbside voting at the inaccessible polling place, or any other method that ensures that voters with disabilities have the same degree of information available to them when casting their ballots as others. If curbside assistance is provided and a polling place official is not stationed outside to provide assistance to people with disabilities in curbside voting, it must include a reliable, effective mechanism by which individuals with disabilities can summon election officials to provide curbside assistance without leaving their vehicles and ensure prompt response and assistance with curbside voting from polling officials.
31. Within three months of the effective date of this Agreement, the Town will survey its voter registration locations for accessibility to persons with disabilities by using the form provided at Attachment F and will report the results of this survey to the Department. If barriers to access are identified, the Town will implement and report to the Department its plan to provide program access, which may include allowing persons to register to vote through alternative means or at alternative locations.
32. Within three months of the effective date of this Agreement, the Town will make all voter registration materials available in alternate formats, including Braille, large print, audio tape, and accessible electronic format (e.g., HTML).
33. Within the month prior to the next election that utilizes the Town's polling places, and at yearly anniversaries of the effective date of this Agreement until it expires, the Town will train poll workers on the rights of people with disabilities and the practical aspects of assuring those rights. The training will cover, at minimum, the need to maintain the physical accessibility of polling locations; how to assist people with disabilities, as necessary; and how to operate any non-standard voting equipment or accessible features of standard equipment (particularly new, accessible equipment).

EMERGENCY MANAGEMENT PROCEDURES AND POLICIES

34. The Department will work collaboratively with the Town to ensure that the Town's Emergency Operations Plan (EOP) will be in compliance with ADA requirements.

The touchstone for compliance with ADA requirements relating to emergency management is Chapter 7 of the Department's *ADA Best Practices Tool Kit for State and Local Government (ADA Tool Kit)*, which addresses in detail key ADA obligations that apply to all aspects of emergency management, including planning, preparedness, evacuation, shelters, medical and social services, lodging and housing programs, recovery, and rebuilding.

35. The Town is committed to compliance with the ADA requirements as described in Chapter 7 of the *ADA Tool Kit*. Within 60 days of the effective date of this Agreement, the Town will revise its EOP so that it conforms with Chapter 7 of the *ADA Tool Kit*, and the Town will provide a copy of its revised EOP (including supporting documents) to the Department. The Department will review the revised EOP to ensure compliance with title II of the ADA and its implementing regulation.
36. If the Town contracts with another entity, such as the American Red Cross or another local government, to provide its emergency preparedness plans and emergency response services, the Town will ensure that the other entity complies with the following provisions on its behalf.
37. Within three months of the effective date of this Agreement, the Town will implement and report to the Department its written procedures that ensure that it regularly solicits and incorporates input from persons with a variety of disabilities and those who serve them regarding all phases of its emergency management plan (preparation, notification, response, and clean up).
38. Within three months of the effective date of this Agreement, the Town will implement and report to the Department its written procedures that ensure that its community evacuation plans enable those who have mobility impairments, vision impairments, hearing impairments, cognitive disabilities, mental illness, or other disabilities to safely self-evacuate or be evacuated by others. Some communities are instituting voluntary, confidential registries of persons with disabilities who may need individualized evacuation assistance or notification. If the Town adopts or maintains such a registry, its report to the Department will discuss its procedures for ensuring voluntariness, appropriate confidentiality controls, and how the registry will be kept updated, as well as its outreach plan to inform persons with disabilities of its availability. Whether or not a registry is used, the Town plan should address accessible transportation needs for persons with disabilities.
39. Within three months of the effective date of this Agreement, the Town will implement and report to the Department its written procedures that ensure that if its emergency

warning systems use sirens or other audible alerts, it will also provide ways to inform persons with hearing impairments of an impending disaster. The use of auto-dialed TTY messages to pre-registered individuals who are deaf or hard of hearing, text messaging, e-mails, open-captioning on local TV stations and other innovative uses of technology may be incorporated into such procedures, as well as lower-tech options such as dispatching qualified sign language interpreters to assist with emergency TV broadcasts.

40. Within three months of the effective date of this Agreement, the Town will implement and report to the Department its written procedures that ensure that persons who use service animals are not separated from their service animals when sheltering during an emergency, even if pets are normally prohibited in shelters. The procedures will not segregate persons who use service animals from others, but may take into account the potential presence of persons who, for safety or health reasons, should not be in contact with certain types of animals.
41. Within three months of the effective date of this Agreement, the Town will develop, implement, and report to the Department its plans for providing equivalent opportunities for accessible post-emergency temporary housing to persons with disabilities. Within one year of the effective date of this Agreement, the Town will ensure that information it makes available regarding temporary housing includes information on accessible housing (such as accessible hotel rooms within the community or in nearby communities) that could be used if people with disabilities cannot immediately return home after a disaster if, for instance, necessary accessible features such as ramps or electrical systems have been compromised.

SIDEWALKS

42. Within three months of the effective date of this Agreement, the Town will implement and report to the Department its written process for soliciting and receiving input from persons with disabilities regarding the accessibility of its sidewalks, including, for example, requests to add curb cuts at particular locations.
43. Within three months of the effective date of this Agreement, the Town will identify and report to the Department all streets, roads, and highways that have been constructed or altered since January 26, 1992. Paving, repaving, or resurfacing a street, road, or highway is considered an alteration for the purposes of this Agreement. Filling a pothole is not considered an alteration for the purposes of this Agreement. Within three years of the effective date of this Agreement, the Town will provide curb

ramps or other sloped areas complying with the Standards or UFAS at all intersections of the streets, roads, and highways identified under this paragraph having curbs or other barriers to entry from a street level pedestrian walkway.

44. Beginning no later than three months after the effective date of this Agreement, the Town will provide curb ramps or other sloped areas complying with the Standards or UFAS at any intersection having curbs or other barriers to entry from a street level pedestrian walkway, whenever a new street, road, or highway is constructed or altered.
45. Within three months of the effective date of this Agreement, the Town will identify all street level pedestrian walkways that have been constructed or altered since January 26, 1992. Paving, repaving, or resurfacing a walkway is considered an alteration for the purposes of this Agreement. Within three years of the effective date of this Agreement, the Town will provide curb ramps or other sloped areas complying with the Standards or UFAS at all places where a street level pedestrian walkway identified under this paragraph intersects with a street, road, or highway.
46. Beginning no later than three months after the effective date of this Agreement, the Town will provide curb ramps or other sloped areas complying with the Standards or UFAS at all newly constructed or altered pedestrian walkways where they intersect a street, road, or highway.

WEB-BASED SERVICES AND PROGRAMS

47. Within one month of the effective date of this Agreement, and on subsequent anniversaries of the effective date of this Agreement, the Town will distribute to all persons – employees and contractors – who design, develop, maintain, or otherwise have responsibility for content and format of its website(s) or third party websites used by the Town (Internet Personnel) the technical assistance document, “Accessibility of State and Local Government Websites to People with Disabilities,” which is Attachment H to this Agreement (it is also available at www.ada.gov/websites2.htm).
48. Within three months of the effective date of this Agreement, and throughout the life of the Agreement, the Town will do the following:
 - A. Establish, implement, and post online a policy that its web pages will be accessible and create a process for implementation;

- B. Ensure that all new and modified web pages and content are accessible;
- C. Develop and implement a plan for making existing web content more accessible;
- D. Provide a way for online visitors to request accessible information or services by posting a telephone number or e-mail address on its home page; and
- E. Periodically (at least annually) enlist people with disabilities to test its pages for ease of use.

NEW CONSTRUCTION, ALTERATIONS, AND PHYSICAL CHANGES TO FACILITIES

- 49. The Town will ensure that all buildings and facilities constructed by or on behalf of the Town are constructed in full compliance with the requirements of 28 C.F.R. § 35.151, including applicable architectural standards.
- 50. The Town will ensure that alterations to Town facilities are made in full compliance with the requirements of 28 C.F.R. § 35.151, including applicable architectural standards.
- 51. The elements or features of the Town facilities that do not comply with the Standards, including those listed in Attachments I, J, K, and , prevent persons with disabilities from fully and equally enjoying the Town services, programs, or activities and constitute discrimination on the basis of disability within the meaning of 42 U.S.C. § 12132 and 28 C.F.R. §§ 35.149 and 35.150.
- 52. The Town will comply with the cited provisions of the Standards when taking the actions required by this Agreement.
- 53. Within three months of the effective date of this Agreement, the Town will install signage as necessary to comply with 28 C.F.R. § 35.163(b), after having surveyed all facilities that are the subject of this Agreement for the purpose of identifying those that have multiple entrances not all of which are accessible.
- 54. Newly Constructed Facilities: In order to ensure that the following spaces and elements in Town facilities for which construction was commenced after January 26, 1992, are readily accessible to and usable by persons with disabilities, the Town will take the actions listed in Attachments I and M.

55. Altered Facilities: In order to ensure that the following spaces and elements in Town facilities for which alterations commenced after January 26, 1992, are readily accessible to and usable by persons with disabilities, the Town will take the actions listed in Attachments J and M.
56. Program Access in Existing Facilities: In order to ensure that each of the Town programs, services, and activities operating at a facility that is the subject of this Agreement, when viewed in its entirety, is readily accessible to and usable by persons with mobility impairments, the Town will take the actions listed in Attachments K and M.
57. Facilities and Programs Not Surveyed by the Department: The Town will review compliance with the requirements of title II of the ADA for those Town facilities and programs that were not reviewed by the Department. Within twelve months of the effective date of this Agreement, the Town will submit for review by the Department a detailed report listing the access issues identified during its review together with the corrective actions and completion dates proposed to resolve such issues. The review conducted by the Town, the access issues identified, and the corrective actions and completion dates proposed will be consistent with the requirements of title II of the ADA; the review of Town facilities and programs conducted by the Department for purposes of this Agreement; and the access issues, corrective actions, and completion dates reflected in Attachments I, J, K, and M.

PROGRAMS FOR VICTIMS OF DOMESTIC VIOLENCE AND ABUSE

58. If the Town owns or operates any Domestic Violence Programs, within three months of the effective date of this Agreement, it will do the following:
- A. Whatever written information is provided regarding its Domestic Violence Programs will also be provided in alternate formats, including Braille, large print, audio recording, and electronic formats (e.g., HTML), upon request.
 - B. Enter into contracts or make other arrangements with qualified sign language and oral interpreters to ensure their availability when required for effective communication with persons who are deaf or hard of hearing. The type of aid that will be required for effective communication will depend on the individual's usual method of communication, and the nature, importance, and duration of the communication at issue. In many circumstances, oral communication supplemented by gestures and visual aids, an exchange of written notes, use of a computer or typewriter, or use of an assistive listening

device may be effective. In other circumstances, qualified sign language or oral interpreters are needed to communicate effectively with persons who are deaf or hard of hearing. The more lengthy, complex, and important the communication, the more likely it is that a qualified interpreter will be required for effective communication with a person whose primary means of communication is sign language or speech reading.

- C. If the Town's Domestic Violence Programs operate a hotline to take telephone calls of an emergency nature, the Town shall ensure that it provides equivalent service for persons who use TTY's, including providing direct-connection service for TTY users with hotline operators, without requiring TTY users to call through a third party operator, such as through the state or local Telecommunication Relay Services. The Town will obtain the necessary equipment, establish the written procedures, and provide the training necessary to ensure effective communication by Hotline staff with direct-connection callers using TTY's, as well as the training necessary to respond to callers who use the Telecommunication Relay Services.
- D. Survey facilities used as shelters or designated as potential shelters – or for counseling, job training, education, clothing or household provisioning, or other aspects of Domestic Violence Programs – to ensure that adequate arrangements are available for potential clients and family members with disabilities, including adults and children who have mobility impairments, who are blind or have low vision, and who are deaf or hard of hearing. Within one year of the effective date of this Agreement, modify each such facility to remove the barriers or, alternatively, procure another, fully accessible facility to ensure that potential clients and family members with disabilities have integrated options when participating in a sheltering or other Domestic Violence program. Nothing in this Agreement requires any modifications that would compromise the confidentiality of a shelter or counseling center. Until there is a sufficient stock of accessible housing and other facilities within the sheltering program, the Town will implement written procedures ensuring that it has identified temporary accessible housing (such as accessible hotel rooms within the community or in nearby communities) and other facilities that could be used if people with disabilities need sheltering or inservice access to a Domestic Violence Program. The cost to potential clients of being housed or otherwise served in alternate accessible facilities shall not exceed any costs normally attributed to clients of the Town's Domestic Violence Programs.

- E. Implement written procedures and modify, as appropriate, eligibility criteria, to ensure that no person with a disability is turned away from a shelter or otherwise denied the opportunity to benefit from the services of the Town's Domestic Violence Programs on the basis of disability.
 - F. Implement written procedures to ensure that persons with disabilities who use service animals are not denied or discouraged from participating in Domestic Violence Programs, are able to be housed and served in an integrated environment, and are not separated from their service animals while participating in the Town's Domestic Violence Programs even if pets are normally not permitted in the facilities where such programs are conducted. The procedures will not unnecessarily segregate persons who use service animals from others but may take into account the potential presence of persons who, for safety or health reasons, should not be in contact with certain types of animals. If the Town's Domestic Violence Programs require clients to make any payments for shelter or other services they provide, clients shall not be required to make additional payments because they or their family members use service animals.
 - G. Implement written procedures to ensure that reasonable modifications are made to the Town's Domestic Violence Programs when necessary for a client or family member with a disability to participate in such Programs, unless doing so would fundamentally alter the nature of the program.
 - H. Implement written policies to ensure that despite any "drug-free" policy of the Town's Domestic Violence Programs, persons with disabilities who use medication prescribed for their use are able to continue using such medication while participating in such Programs or being housed in a shelter.
59. If the Town contracts with another entity to provide or operate programs that provide shelter, counseling, or other assistance or supportive services to victims of domestic violence or abuse and their families (hereafter referred to as "Domestic Violence Programs"), it will ensure that the other entity complies with the preceding provisions on its behalf. If that entity will not comply with the following provisions, the Town will nonetheless take all necessary steps to ensure that its program is accessible to persons with disabilities.
60. Some of the of the Town's shelters may be owned or operated by other public entities subject to title II or by public accommodations subject to title III and, as such, are subject to the obligation to provide program access or remove barriers to accessibility

under the ADA. This Agreement does not limit such future enforcement action against the owners or operators of these facilities by any person or entity, including the Department.

61. This Agreement shall not be construed to require the Town to divulge confidential information relating to the location or existence of any Domestic Violence Programs, beyond what is otherwise required by applicable law or what is necessary for the Department to effectively enforce this Agreement.

MISCELLANEOUS PROVISIONS

62. Except as otherwise specified in this Agreement, at yearly anniversaries of the effective date of this Agreement until it expires, the Town will submit written reports to the Department summarizing the actions the Town has taken pursuant to this Agreement. Reports will include detailed photographs showing measurements, architectural plans, work orders, notices published in the newspaper, copies of adopted policies, and proof of efforts to secure funding/assistance for structural renovations or equipment.
63. Throughout the life of this Agreement, consistent with 28 C.F.R. § 35.133(a), the Town will maintain the accessibility of its programs, activities, services, facilities, and equipment, and will take whatever actions are necessary (such as routine testing of accessibility equipment and routine accessibility audits of its programs and facilities) to do so. This provision does not prohibit isolated or temporary interruptions in service or access due to maintenance or repairs. 28 C.F.R. § 35.133(b).
64. Within six months of the effective date of this Agreement, the Town will develop or procure a two-hour training program on the requirements of the ADA and appropriate ways of serving persons with disabilities. The Town will use the ADA technical assistance materials developed by the Department and will consult with interested persons, including individuals with disabilities, in developing or procuring the ADA training program.
65. Within one year of the effective date of this Agreement, the Town will deliver its training program to all Town employees who have direct contact with members of the public. At the end of that period, the Town will submit a copy of its training curriculum and materials to the Department, along with a list of employees trained and the name, title, and address of the trainer.

IMPLEMENTATION AND ENFORCEMENT

66. If at any time the Town desires to modify any portion of this Agreement because of changed conditions making performance impossible or impractical or for any other reason, it will promptly notify the Department in writing, setting forth the facts and circumstances thought to justify modification and the substance of the proposed modification. Until there is written Agreement by the Department to the proposed modification, the proposed modification will not take effect. These actions must receive the prior written approval of the Department, which approval will not be unreasonably withheld or delayed.
67. The Department may review compliance with this Agreement at any time. If the Department believes that the Town has failed to comply in a timely manner with any requirement of this Agreement without obtaining sufficient advance written agreement with the Department for a modification of the relevant terms, the Department will so notify the Town in writing and it will attempt to resolve the issue or issues in good faith. If the Department is unable to reach a satisfactory resolution of the issue or issues raised within 30 days of the date it provides notice to the Town, it may institute a civil action in federal district court to enforce the terms of this Agreement, or it may initiate appropriate steps to enforce title II.
68. For purposes of the immediately preceding paragraph, it is a violation of this Agreement for the Town to fail to comply in a timely manner with any of its requirements without obtaining sufficient advance written agreement with the Department for an extension of the relevant time frame imposed by the Agreement.
69. Failure by the Department to enforce this entire Agreement or any provision thereof with regard to any deadline or any other provision herein will not be construed as a waiver of the Department's right to enforce other deadlines and provisions of this Agreement.
70. This Agreement is a public document. A copy of this document or any information contained in it will be made available to any person by the Town or the Department on request.
71. This Agreement constitutes the entire agreement between the parties on the matters raised herein, and no other statement, promise, or agreement, either written or oral, made by either party or agents of either party, that is not contained in this written Agreement (including its Attachments, which are hereby incorporated by reference), will be enforceable. This Agreement does not purport to remedy any other potential violations of the ADA or any other federal law. This Agreement does not affect the Town continuing responsibility to comply with all aspects of the ADA.

72. This Agreement will remain in effect for three years or until the parties agree that all actions required by the Agreement have been completed, whichever is later.
73. The person signing for the Town represents that he or she is authorized to bind the Town to this Agreement.
74. The effective date of this Agreement is the date of the last signature below.

For the Town of Swansea:

By: _____
ROBERT A. MARQUIS, Office of Selectman,
Chairman
KENNETH D. FURTADO,
Vice-Chairman
M. SCOTT VENTURA, Clerk
JAMES A. KERN, Town Administrator
Town Hall
81 Main Street
Swansea, MA 02777

Date: 2/4/2011

For the United States:

THOMAS E. PEREZ
Assistant Attorney General for Civil
Rights

JEANINE M. WORDEN, Acting Chief
DOV LUTZKER, Special Counsel
Disability Rights Section

By: _____
NAOMI MILTON, Supervisory Attorney
Disability Rights Section

By: _____
LYN SOWDON, Investigator
Disability Rights Section - NYA
Civil Rights Division
U.S. Department of Justice
950 Pennsylvania Avenue, N.W.
Washington, DC 20530
(202) 307-0663
(202) 514-7821 (fax)

Date: February 15,
2011

Return to Project Civic Access

ADA Home Page

February 16, 2011

Settlement Agreement
Between
The United States of America
and
The Beth Israel Deaconess Medical Center
Under
Title III of the Americans with Disabilities Act

DJ# 202-36-195

Settlement • Department of Justice Press Release

A. DEFINITIONS AND BACKGROUND

1. This matter is based upon a compliance review of physical accessibility for individuals with disabilities at the Beth Israel Deaconess Medical Center ("BIDMC") facilities under title III of the Americans with Disabilities Act, 42 U.S.C. §§ 12181 - 12189 (the "ADA"), and the Department of Justice's implementing regulation, 28 C.F.R. Part 36, including the ADA Standards for Accessible Design, 28 C.F.R. Part 36, Appendix A (the "Standards").
2. Title III of the ADA requires BIDMC to ensure that no individual with a disability is discriminated against on the basis of a disability in the full and equal enjoyment of BIDMC's services and facilities. 42 U.S.C. §§ 12182 - 12183. Title III of the ADA requires, among other things, that BIDMC remove barriers to access in existing facilities where it is readily achievable to do so, and that it construct or alter any buildings or facilities in such a manner that those buildings or facilities meet the requirements of title III of the ADA, including the Standards.
3. BIDMC is the product of the 1996 merger of two and separate historic hospitals. The Deaconess Hospital was founded in 1896 by Methodist deaconesses as part of their

missionary charter to care for city residents, and the Beth Israel Hospital was founded in 1916 by the Boston Jewish community to meet the needs of the growing immigrant population. Today, BIDMC is a non-profit health care institution, and operates as a quaternary acute care academic medical center and a level one trauma center. BIDMC is recognized for its excellent patient care, medical research, teaching and community service.

BIDMC's facilities consist of multiple connecting and non-connecting buildings in the East and West clinical campuses in the Longwood Medical Area of Boston, Massachusetts. Its facilities also include three community health clinics located in Dorchester, Lexington, and Chelsea, Massachusetts. At the time this review began in 2006, BIDMC owned approximately 30 buildings. Five buildings were constructed after the ADA was implemented, and are subject to the new construction standards. These facilities are Shapiro on the East Campus, West Clinical Center on the West Campus, The Lexington Center in Lexington, Massachusetts, Chelsea Community Care Center in Chelsea, Massachusetts, and Bowdoin Street Community Health Center in Dorchester, Massachusetts.

Many of BIDMC's existing buildings, or parts thereof, have been altered or renovated after the implementation of the ADA and are subject to the alterations requirements of the ADA. These facilities include Ansin, Dana, East, Feldberg, Finard, Gryzmish, Kirstein, Rabb, Reisman, Research North, Research West, Rose, Service, Sherman, Slosberg, Stoneman and Yamins on the East Campus; and Baker, Deaconess, Dooley Chapel, Farr, Libby-Maintenance, Lowry, and Palmer on the West Campus.

4. Although the United States found that BIDMC had made significant efforts to make its facilities accessible, the United States' compliance review identified various aspects of BIDMC's facilities that were not in compliance with title III of the ADA and its regulations, including the provisions referenced in Paragraph 2 above.
5. The United States contends that those violations include, but are not limited to:
 - inaccessible (round) door knobs;
 - inadequate wheelchair maneuvering space at doors;
 - incorrect placement of grab bars at toilets;
 - inadequate maneuvering clearance at toilet room doors;
 - hand sanitizer dispensers that protrude into the circulation path;
 - steep (greater than 8.3%) ramps and curb ramps;
 - inaccessible patient rooms and toilet rooms;
 - inaccessible showers;
 - toilet seats that are mounted too high;
 - toilets not centered at 18" from the side wall;
 - drinking fountain spouts that are too high;

- lack of accessible examination tables and accessible equipment, and
 - a lack of accessible routes to some clinical areas.
- 6. On July 1, 2008, the United States provided copies of reports to BIDMC identifying representative violations of the ADA Standards at its facilities and pedestrian routes on the East and West Campuses, as well as at three BIDMC community clinical centers. These reports document alleged violations of the Standards discovered during site surveys of selected portions of BIDMC facilities conducted by the United States in late 2006 and early 2007. BIDMC disputes some of the alleged violations and contends that others have been remedied during the course of the Department’s investigation.
- 7. BIDMC contends that it has taken various steps over the last eighteen years to complete accessibility improvements at its facilities. BIDMC states that, as part of its efforts to comply with title III of the ADA, it:
 - a. has engaged in readily achievable barrier removal and is establishing an ADA advisory group (which seeks guidance from architects, designers and disability organizations) to provide recommendations on barrier removal projects;
 - b. is establishing a process to review all plans for new construction and alterations for compliance with title III, including the Standards; and
 - c. is implementing policies and procedures to ensure that individuals with disabilities will have access to BIDMC’s services.
- 8. The parties to this Settlement Agreement (“Agreement”) are the United States and BIDMC. In order to avoid the burden and expense of further investigation and possible litigation, the parties have entered into this Agreement.
- 9. For the purposes of this Agreement, “Accessible Beds” means height-adjustable hospital beds that are accessible to and usable by persons with disabilities. In order to be deemed accessible, a bed must (i) lower to a point no greater than 17-19 inches from the floor, and (ii) be capable of being locked or otherwise fixed into position so as to permit a safe transfer from a wheelchair or other mobility device without slipping.
- 10. For the purposes of this Agreement, “Accessible Equipment” means equipment that is accessible to and usable by persons with disabilities. In order to be deemed accessible, any piece of medical equipment to which a patient must transfer for examination or treatment purposes, including, but not limited to, examination tables and chairs, tables used for radiologic or other exams, gurneys, and accessible patient beds, must (i) lower to a point no greater than 17-19 inches from the floor, (ii) be capable of being locked or otherwise fixed into position so as to permit a safe transfer from a wheelchair or other mobility device without slipping, and (iii) have a protective padded surface, unless such

a surface is inconsistent with the equipment's intended use.

11. For the purposes of this Agreement, "Accessible Patient Room" means a patient room that complies with the alteration requirements (unless in a newly constructed facility) of the ADA Standards for Accessible Design, 28 C.F.R. Part 36, Appendix A. In addition, all accessible patient rooms must (i) contain an accessible toilet room; (ii) contain or have access to an accessible shower (consistent with the amenities provided in adjacent patient rooms); (iii) contain or have access to height-adjustable, medical-surgical beds ("med-surg beds") that lower to a point no greater than 17-19 inches from the floor ("Accessible Beds"); and (iv) contain or have access to all other amenities provided in, or available to, patients in rooms in the same clinical service category.
12. For the purposes of this Agreement, "Ancillary Equipment" means equipment used with examination tables or chairs, and adapted to or adjustable for use by individuals with disabilities. Ancillary equipment includes items such as leg supports for gynecological examinations, protective padding, positioning straps, and additional supports or rails needed to ensure the safety and comfort of patients with disabilities.

B. JURISDICTION

13. BIDMC is a private entity, located in the Boston, Massachusetts area, that owns and operates hospital facilities, professional offices of health care providers, and other service establishments, and its operations affect commerce. Accordingly, it is a public accommodation covered by title III of the ADA. 42 U.S.C. § 12181(7)(F), 28 C.F.R. § 36.104.
14. The ADA requires that the Department of Justice conduct periodic compliance reviews of public accommodations. 42 U.S.C. § 12188(b)(1)(A). The Department of Justice is also authorized to commence a civil action in a United States district court if it is unable to secure voluntary compliance in any case that involves a pattern or practice of discrimination or that raises issues of general public importance, and to seek injunctive relief, monetary damages, and civil penalties. 42 U.S.C. §§ 12188(a)(2) and 12188(b). In consideration for the terms of this Agreement and BIDMC's promises contained in Section C of this Agreement, the Department of Justice agrees to refrain from undertaking further investigation into or from filing civil suit in this matter at this time, except as provided in Section D below.
15. The subjects of this Agreement are BIDMC's obligations to:
 - a. Modify policies, practices, and procedures when necessary in order to afford access to services and facilities to individuals with disabilities, 42 U.S.C. §§ 12182(a) & 12182 (b)(2)(A)(ii), 28 C.F.R § 36.302;
 - b. Remove architectural barriers in existing facilities where such removal is readily

achievable, 42 U.S.C. § 12182(b)(2)(A)(iv), 28 C.F.R § 36.304;

- c. Undertake alterations in such a manner that they are readily accessible to and usable by persons with disabilities to the maximum extent feasible, 42 U.S.C. § 12183(a), 28 C.F.R §§ 36.402 & 403;
- d. Ensure that all of its newly constructed buildings are readily accessible to and usable by individuals with disabilities as required by the ADA and its regulations, including the Standards, 42 U.S.C. § 12183(a), and 28 C.F.R §§ 36.401-406, and App. A;
- e. Ensure that each clinical service has the requisite number of accessible patient rooms with accessible patient beds and has at least one examination table, and other medical equipment (e.g. exam chairs, lifts, radiologic equipment, wheelchair scales) to enable equal access to medical services, 42 U.S.C. §12182(b)(1)(A), 28 C.F.R § 36.302 and App. A § 6; and
- f. Ensure that no individual with a disability is discriminated against on the basis of disability in the full and equal enjoyment of BIDMC's services and facilities. 42 U.S.C. §§ 12182 -12183, 28 C.F.R § 36.201(a), and App. A.

C. REMEDIAL ACTION

ADA Compliance Officer, Training and Web Site

- 16. By no later than thirty days after the effective date of this Agreement, BIDMC shall designate an ADA Compliance Officer who shall have the primary authority and responsibility for ensuring that all aspects of BIDMC meet the terms of this Agreement and of the ADA. In addition, the Compliance Officer shall be responsible for overseeing accessibility modification projects, including plans for barrier removal or alterations at BIDMC. The position of Compliance Officer shall be filled and maintained throughout the course of this Agreement. The ADA Compliance Officer shall have authority within BIDMC to implement changes and effectuate this Agreement and shall serve as BIDMC's primary administrative contact for the Agreement.
- 17. By no later than ninety days after the effective date of this Agreement, BIDMC shall select at least two employees to assist the Compliance Officer in fulfilling the obligations of this Agreement. The Compliance Officer – along with the selected employees who will assist him or her – shall undergo training on the ADA's accessibility requirements no later than one hundred and twenty days after the effective date of this Agreement. The training shall be of sufficient quality and duration to enable these individuals to become proficient in understanding the applicable accessibility requirements of title III

of the ADA, including the ADA Standards.

18. By no later than one year after the effective date of this Agreement, BIDMC shall display on its website information to assist individuals with disabilities to identify accessible routes through the BIDMC campuses, accessible parking areas, accessible entrances to buildings, and accessible spaces within buildings. BIDMC's website shall also be updated regularly to reflect newly added or renovated accessible features of the hospital such as accessible patient rooms and accessible equipment.

Changes to Facilities and Routes

19. Except where an earlier deadline is set forth in this Agreement, BIDMC shall complete all work required under this Agreement by five years from the effective date.
20. NEW CONSTRUCTION. As of the effective date of this Agreement, BIDMC agrees to take steps to ensure that it shall design and construct all new facilities, and parts thereof, in compliance with the ADA. 42 U.S.C. § 12183(a)(1), 28 C.F.R. §§ 36.401 & 406. Where BIDMC has failed to comply with the ADA's new construction requirements (with respect to facilities constructed prior to the effective date of this Agreement but constructed for first occupancy after January 26, 1993), BIDMC agrees to correct aspects of those elements of newly constructed facilities that fail to comply with the ADA Standards by no later than three years from the effective date of this Agreement.
21. ALTERATIONS and BARRIER REMOVAL. BIDMC shall ensure that any alterations to BIDMC facilities shall comply with the requirements for alterations in the ADA Standards. 42 U.S.C. § 12183(a)(2), 28 C.F.R. §§ 36.402 - 36.406. BIDMC also agrees to ensure that any specific alterations or barrier removal efforts required by this Agreement shall comply with the requirements for alterations in the ADA Standards, except where, on a case-by-case basis, the parties may agree to different requirements for purposes of this Agreement. BIDMC may deviate from these requirements only after a detailed written request by BIDMC has been approved by the United States. The United States shall respond to a detailed written request within 60 days of receipt. If the parties are unable to agree, then the provisions of paragraph 35 will apply.
22. As noted in paragraph 6, the United States surveyed a representative selection of BIDMC's buildings, facilities, and equipment, and provided a report to BIDMC that noted representative violations of the ADA Standards. The manner that these violations will be addressed is identified in Appendix A. The work identified in Appendix A, as well as all other remedial work required by this Agreement, shall be completed pursuant to the Schedule set forth below, unless the parties otherwise agree in writing to modify this Schedule:
 - a. By no later than three years from the effective date of this Agreement, BIDMC shall complete all remedial work required by this Agreement at the Bowdoin

Street Health Center, Chelsea Health Center, Lexington Health Center, Shapiro Clinical Center and West Clinical Center;

- b. By no later than five years from the effective date of this Agreement, BIDMC shall complete all remedial work required by this Agreement at the remainder of BIDMC's facilities including, but not limited to, Farr, Feldberg, Lowry, Reisman, and Stoneman.
23. Within one year of the effective date of this Agreement, BIDMC shall survey those facilities and routes that were not surveyed by the United States and develop a plan to correct violations of the ADA Standards with respect to new construction and alterations, and to remove barriers to access where it is readily achievable to do so. That plan shall be provided to the Department upon its completion and the remedies required therein shall be implemented in accordance with paragraphs 19-21, and in accordance with the Schedule for Remedial Work set forth in paragraph 22 above. The parties shall negotiate in good faith any disputes regarding the survey conducted by BIDMC.
24. Within one year of the effective date of this Agreement, at those facility entrances and public and common use toilet rooms that are not accessible, BIDMC shall install directional signage that complies with Standards 4.1.2(7), 4.1.3(7)(d), 4.1.3(16), and 4.30 indicating the location of the nearest accessible entrance or public and common use toilet room. At accessible facility entrances and public and common use toilet rooms, BIDMC shall install the International Symbol of Accessibility and signage complying with the applicable requirements of Standards 4.1.2(7), 4.1.3(16), and 4.30.
25. Each building or facility subject to this Agreement currently has at least one accessible entrance. By no later than one year after the effective date of this Agreement, BIDMC shall provide at each facility, at least one accessible exterior route connecting at least one accessible building entrance to each of the following: public transportation stops located on the BIDMC campus, accessible parking spaces, passenger loading zones and public streets or sidewalks. Standards 4.1.2(1), (2) and 4.3.

Patient Rooms

26. BIDMC shall ensure that, at each of its facilities, at least 10% of its patient rooms are Accessible Patient Rooms (see Standards 6.1(1) and (2)), as defined in paragraph 11. In making modifications to ensure that it has provided the percentage of accessible patient rooms specified above, BIDMC shall also continue to ensure that these designated Accessible Patient Rooms are dispersed throughout BIDMC's facilities and clinical services to the greatest extent possible.

Medical Equipment

27. BIDMC shall provide Accessible Equipment, as defined in paragraph 10 above, as appropriate to each clinical service that utilizes examination tables or chairs and which does not already have such an Accessible Examination table or chair. Each table and/or chair shall be equipped with all necessary Ancillary Equipment, as defined in paragraph 12 above.
28. To ensure that it provides Accessible Medical Equipment, BIDMC will, within one year of the date of this Agreement, identify and maintain a data base of equipment that is utilized in the care of patients and that can be potentially modified, supplemented or replaced to improve equal access to care for patients with disabilities, including all equipment to which a patient is required to transfer (e.g., examination tables and ophthalmology equipment). In this date base, BIDMC will also identify what, if any, additional equipment (e.g., examination tables and chairs, lifts, radiologic equipment, wheelchair scales, positioning equipment, specialized air mattresses, or other adaptive technology for patients with disabilities, such as accessible call buttons) should be purchased or modified to ensure that individuals with disabilities receive equal access to medical services. Where BIDMC is unable to identify equipment that would ensure that individuals with disabilities receive equal access to particular medical services, identify alternative measures that would ensure such access. This information shall be provided to the United States in BIDMC's annual report, as described in paragraph 32 of this Agreement.
29. BIDMC agrees that at least 10% of examination and treatment equipment purchased or leased after the effective date of this Agreement, but no fewer than one of each type in each clinical service, will be accessible to and usable by individuals with disabilities. BIDMC will maintain this percentage, and ensure that at least one of each type of its Accessible Equipment is of equivalent quality to similar non-Accessible Equipment used by BIDMC. The ADA Compliance Officer or one of his or her representatives will work with the BIDMC purchasing department to establish a protocol to review and coordinate proposed equipment purchases to comply with the height requirements of the ADA¹.
30. BIDMC agrees that with respect to ancillary equipment (as defined in paragraph 12), a reasonable percentage, at least 10%, and no less than one, of each type, will be adapted or adjustable for use by individuals with disabilities.

D. ENFORCEMENT AND REPORTING

31. At any time during the effective dates of this Agreement, the United States reserves the right to inspect, with reasonable notice to counsel, the BIDMC facilities; to request access to records; and to request documentation of compliance with this Agreement.
32. Commencing in 2010, and throughout the term of this Agreement, BIDMC shall provide

the United States with an annual report, due on or before October 1 of each year that contains the following:

- a. a detailed written report, including digital photographs, architectural drawings, copies of purchase agreements or orders, and copies of policies and procedures, that demonstrates compliance with the provisions of this Agreement; and
- b. a list of every project for new construction (as defined by the ADA and its regulations) that has commenced, or for which plans have been developed, during the preceding fiscal year, which runs from October 1 to September 30.

The United States will use its best efforts to, in a reasonably prompt manner, advise BIDMC of any ADA violations that are apparent from the materials provided by BIDMC pursuant to this paragraph.

33. If during the implementation of this Agreement, BIDMC determines that, due to reasons beyond its control (e.g. substantial and unexpected change in its financial situation, etc.), it cannot complete work by the dates set forth in this Agreement, BIDMC may seek a reasonable extension of time to complete the work, and the United States will not unreasonably withhold its consent.
34. By no later than three months after the date all work is due to be completed under this Agreement, BIDMC shall provide the United States with a detailed final written report, including digital photographs, architectural drawings, and copies of policies and procedures, that demonstrates compliance with the provisions of this Agreement. The report need not address items for which BIDMC has previously produced reports. In addition, BIDMC shall maintain the written evaluations and reports required by this Agreement for the duration of this Agreement, and shall provide copies of any report(s) to the United States within 30 days of a request.
35. If, based on the reports provided by BIDMC pursuant to this Agreement or other information, the United States finds that BIDMC has failed to comply with the Agreement, the United States agrees to notify BIDMC in writing of the alleged noncompliance and attempt to seek a resolution of the matter with BIDMC. If the parties are unable to reach a resolution within 60 days of the date of the United States' written notification, the United States may seek enforcement of the terms of this Agreement in the United States District Court for the District of Massachusetts. Alternatively, should the parties be unable to reach a resolution within 60 days of the date of the United State's written notification, the United States may bring an action to enforce compliance with the ADA and its implementing regulation.
36. Nothing in this Agreement waives the right of the United States to bring a civil action to enforce this Agreement or any provision thereof.

37. This Agreement constitutes the entire Agreement between the parties relating to the United States' title III compliance review referenced in paragraph 1 above, and Department of Justice matter number 202-36-195, and no other statement, promise or agreement, either written or oral, made by any party or agents or any party that is not contained in this written Agreement, including its attachments, shall be enforceable. This Agreement does not purport to remedy any other potential violations of the ADA or any other federal law. This Agreement does not affect BIDMC's continuing responsibility to comply with all aspects of the ADA.
38. Failure by the United States to enforce this entire Agreement, or any provision thereof with regard to any deadline or any other provision herein, shall not be construed as a waiver of the United States' right to enforce other deadlines and provisions of this Agreement.
38. If any term of this Settlement Agreement is determined by any court to be unenforceable, the other terms of this Agreement shall nonetheless remain in full force and effect, provided, however, that if the severance of any such provision materially alters the rights or obligations of the parties, the Department of Justice and BIDMC shall engage in good faith negotiations in order to adopt mutually agreeable amendments to this Agreement as may be necessary to restore the parties as closely as possible to the initially agreed upon relative rights and obligations.
39. This Agreement shall be binding on BIDMC, its agents, its employees, and any successors or assigns. In the event that BIDMC seeks to transfer or assign any facility owned by it as of the date of this Agreement, and the successor or assign intends to continue the same or similar use of the facility, as a condition of sale, BIDMC shall obtain the written accession of the successor or assign to any obligations remaining under this Agreement for the remaining term of this Agreement.
40. This Agreement is effective October 1, 2009, and expires October 1, 2015.

For the United States of America:
For Beth Israel Deaconess Medical Center:

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Date: 10/21/09 Date: 10/22/09

1. If equipment fully meeting the height requirement in paragraphs 9 and 10 is not readily commercially available, BIDMC shall purchase equipment that comes closest to meeting the height requirements. If BIDMC determines, in its judgment, that an accessible model of a particular piece of equipment is available, but that the overall functionality of the accessible model is substantially less, or its cost substantially greater, than non-accessible alternatives, BIDMC may present its justification to DOJ and request approval to purchase the non-accessible alternative. DOJ shall respond within 30 days, or 3 business days for emergency situations as designated by BIDMC, and shall not unreasonably withhold approval.

Appendix A

Building Name	Barrier	Page
<u>Ansin</u>	1-9	2
<u>Baker</u>	10-18	4
<u>Bowdoin Street Clinic</u>	19-50	6
<u>Chelsea Clinic</u>	51-78	9

<u>Dana</u>	79-80	12
<u>Deaconess</u>	81-106	13
<u>Dooley Chapel</u>	107	16
<u>East</u>	108-136	17
<u>Farr</u>	137-193	21
<u>Feldberg</u>	194-202	27
<u>Finard</u>	203-209	29
<u>Gryzmish</u>	210-217	31
<u>Kirstein</u>	218-261	33
<u>Lexington Clinic</u>	262-312	38
<u>Libby</u>	313-316	43
<u>Lowry</u>	317-353	44
<u>Lowry Garage</u>	354-358	48
<u>Palmer</u>	359-380	49
<u>Pilgrim Garage</u>	381-384	52
<u>Rabb</u>	385-400	53
<u>Reisman</u>	401-413	55
<u>Research West</u>	414-415	57
<u>Rose</u>	416-419	58
<u>Shapiro</u>	420-481	59
<u>Shapiro Garage</u>	482-484	64
<u>Slosberg</u>	485	65
<u>Stoneman</u>	486-512	66
<u>West Campus Clinical Center</u>	513-578	70
<u>Yamins</u>	579-582	76

[Return to Settlements](#)

[ADA Home Page](#)

October 27, 2009